

United States
Court of Appeals
for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter, Office
of the Housing Expediter,

Appellant,

vs.

JOHN McCORD and FLORENCE McCORD,

Appellees.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
OCT 27 1948

PAUL P. O'BRIEN,

No. 12039

United States
Court of Appeals

for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,
BENJAMIN CHAPMAN,
1206 Santee Street,
Los Angeles 15, California.

For Appellees:

DESSER, RAU, CHRISTENSEN &
HOFFMAN,
325 West 8th Street,
Los Angeles, California. [1*]

* Page numbering appearing at foot of page of original
Certified Reporter's Transcript.

In the District Court of the United States for the
Southern District of California, Central Division

No. 6656 - Y

PHILIP B. FLEMING, Administrator, Office of
Temporary Controls, Office of Price Adminis-
tration,

Plaintiff,

vs.

JOHN McCORD, FLORENCE McCORD,
DOE I and DOE II,

Defendants.

COMPLAINT OF TREBLE DAMAGES AND INJUNCTION

I.

Plaintiff, as Administrator of the Office of Temporary Controls, Office of Price Administration, brings this action for an injunction and treble damages on behalf of the United States of America, pursuant to Section 205(a) to enforce compliance with Section 4 and Section 205(e) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., hereinafter referred to as "The Act", and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator of the Office of Price Administration pursuant to Section 2 of the Act.

II.

Jurisdiction of this action is conferred upon this Court by Section 205(c) and 205(e) of the Act. [2]

III.

That the defendants, Doe I and Doe II, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered, this complaint may be amended by inserting such true names in the place and stead of such fictitious names.

IV.

Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued. If but one person is listed on the attached statement, the word "persons" as used herein, shall refer to said person.

V.

During all times herein mentioned defendant has been the owner and operator of property located at 948 South Figueroa Street, City and County of Los Angeles, and has resided in Ontario, California.

VI.

Defendant received from persons for the use and occupancy of the hereinafter described accommodations, rents in excess of the maximum rents established by said Rent Regulations; that there is attached hereto and by reference made a part hereof, as though fully set out herein, a statement of the names of the persons overcharged, the period of occupancy of such persons, the maximum rent, the rent received from said persons and the amount of overcharges.

VII.

That said persons have failed to institute an ac-

tion under Section 205(e) of the Act, and more than thirty days have elapsed since the occurrence of the violations. [3]

VIII.

~~Plaintiff is informed and believes and therefore~~ alleges on such information and belief that defendant, as such landlord, within one year prior to the date of the filing of this action, in addition to the rent or rents demanded and received from tenants in this complaint alleged, demanded and received from other and different tenants rents in excess of the maximum rents permitted under said Rent Regulations; that the number and names of tenants and the amount of overcharges are facts peculiarly within the knowledge of said defendant **and plaintiff** is unable at this time to allege with certainty the amount of rents charged in excess of said maximum rents but that plaintiff upon ascertaining the amount or amounts thereof and the names of said tenants, will ask leave to amend this complaint and set forth the amount of said overcharges and the tenants from whom said overcharges were demanded and received. [Marginal Note: Stricken by the Court July 28, 1947. L.R.Y.]

Wherefore, the plaintiff demands:

(a) Judgment for the plaintiff to recover of the defendant treble the total amounts received by the defendant from persons as rent for the use and occupancy of the housing accommodations described in the complaint, which were in excess of the maximum rents established by the Act and regulations issued thereunder, and further that;

(b) The defendant be ordered and directed to tender to all available persons named in the schedule attached hereto as are entitled thereto a refund of all amounts in excess of the maximum rents established by the Act and regulations issued thereunder which were received by the defendant, his agents, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by said regulations, provided that refunds made by the defendant to such persons in compliance with the directions of the Court for rents received [4] within one year prior to the bringing of this action, shall be deducted from the amount of the judgment prayed for in the preceding paragraph (a).

AUSTIN CLAPP,
WADIEH S. SHIBLEY,
ABE I. LEVY,

By /s/ SAMUEL B. STEINBACH,
Attorneys for Plaintiff. [5]

Housing accommodations located at 948 South Figueroa Street, City of Los Angeles, County of Los Angeles, State of California, and described as Belmont Apartments.

| Unit | Name of Tenant | Legal Maximum Rent | Amount Paid | Period of Over- charge Commencing | Amount of Overcharge |
|------|---|-----------------------|----------------|--------------------------------------|-------------------------|
| 205 | Mary E. O'Shea..... | \$32.50 Mo. | \$10.00 Wk. | 8/15/45, for 31 weeks | \$ 79.50 |
| 207 | H. Herrmann | 45.00 Mo. | 15.00 Wk. | 10/ 1/43, for 132 weeks | 608.52 |
| 208 | W. R. Campbell..... | 7.00 Wk. | 10.00 Wk. | 4/10/45, for 49 weeks | 147.00 |
| 210 | Allen D. Bull..... | 55.00 Mo. | 25.00 Wk. | 1/ 7/44, for 16 weeks | 196.80 |
| 210 | Allen D. Bull..... | 55.00 Mo. | 22.50 Wk. | 4/28/44, for 99 weeks | 970.20 |
| 216 | M. Louisa Riley..... | 55.00 Mo. | 20.00 Wk. | 10/24/45, for 13 weeks | 94.90 |
| 217 | J. M. Reardon..... | 32.50 Mo. | 10.00 Wk. | 8/ 3/45, for 33 weeks | 82.50 |
| 304 | M. P. Anderson..... | 35.00 Mo. | 10.00 Wk. | 8/24/45, for 30 weeks | 55.00 |
| 305 | Nettie G. Johnson, Adelyn Fredrickson.... | 35.00 Mo. | 10.00 Wk. | 12/ 2/43, for 120 weeks | 218.40 |
| 312 | Andrew P. M. Weir..... | 35.00 Mo. | 12.50 Wk. | 10/28/44, for 72 weeks | 318.24 |
| 315 | Maxine Scarlett, Adelyn Frederickson..... | 35.00 Mo. | 10.00 Wk. | 10/14/44, for 74 weeks | 142.08 |
| 405 | Catherine Carroll | 35.00 Mo. | 10.00 Wk. | 3/27/45, for 51 weeks | 97.93 |

| Unit | Name of Tenant | Legal Maximum Rent | Amount Paid | Period of Over- charge Commencing | Amount of Overcharge |
|------|--|-----------------------|----------------|--------------------------------------|-------------------------|
| 407 | Fern Boltz | \$50.00 Mo. | \$18.00 Wk. | 8/15/44, for 83 weeks | \$535.35 |
| 411 | Nettie Simms, Janice Erickson..... | 37.50 Mo. | 12.50 Wk. | 10/16/44, for 74 weeks | 284.16 |
| 505 | Norna G. Sessums..... | 32.50 Mo. | 40.00 Mo. | 9/14/44, for 13 months | 97.50 |
| 505 | Mrs. J. Northledge..... | 32.50 Mo. | 10.00 Wk. | 10/20/45, for 21 weeks | 52.50 |
| 507 | George F. Corbett..... | 50.00 Mo. | 20.00 Wk. | 2/ 9/46, for 5 weeks | 42.25 |
| 510 | Eileen J. Meloy..... | 50.00 Mo. | 22.50 Wk. | 2/15/44, for 83 weeks | 908.85 |
| 511 | H. H. Tubbs..... | 35.00 Mo. | 10.00 Wk. | 9/16/44, for 78 weeks | 149.76 |
| 605 | Mariah K. Sutherland, Marie Knapp..... | 35.00 Mo. | 10.00 Wk. | 6/30/44, for 80 weeks | 153.60 |
| 615 | J. B. Fordyce | 37.50 Mo. | 12.50 Wk. | 9/28/44, for 77 weeks | 295.68 |
| | | | | Total..... | \$5,530.72 |

Statement of facts referred to and alleged in Paragraph VI of Plaintiff's Complaint herein.

[Endorsed]: Filed Mar. 27, 1947.

[Title of District Court and Cause.]

ANSWER

In answer to plaintiff's complaint, defendants John McCord and Florence McCord admit, deny and allege as follows:

I.

Deny generally and specifically each and every allegation contained in Paragraphs V, VI and VII of plaintiff's complaint.

And for a Further, Separate and Distinct Defense to Plaintiff's Complaint, Defendants Allege that:

I.

Plaintiff's complaint fails to state a claim against defendants upon which relief can be granted.

And for a Further, Separate and Distinct Defense to Plaintiff's [8] Complaint, Defendants Allege that:

I.

The claims set forth in plaintiff's complaint are barred by the provision of Section 925e Title 50 of the United States Code in that action thereon was not commenced within one (1) year from the date of the occurrence of the alleged violations.

And for a Further, Separate and Distinct Defense to Plaintiff's Complaint, Defendants Allege that:

I.

The violations by defendants, if any there were, of the Emergency Price Control Act of 1942, as

amended, or the Rent Regulations issued by the Administrator of the Office of Price Administration were neither wilful nor the result of failure to take practicable precautions against the commission of any such violations.

And for a Further, Separate and Distinct Defense to Plaintiff's Complaint, Defendants Allege that:

I.

Plaintiff is not authorized nor does he have the capacity to institute or prosecute the claims set forth in the plaintiff's complaint.

Wherefore, defendants pray that plaintiff take nothing by his action; that defendants be awarded their costs of suit, and such other relief as the court deems proper.

DESSER, RAU, CHRISTENSEN &
HOFFMAN,

By /s/ WM. CHRISTENSEN,
Attorneys for Defendants.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 15, 1947. [9]

[Title of District Court and Cause.]

ORDER SUBSTITUTING PARTY
PLAINTIFF

The petition of Frank R. Creedon, Housing Expediter, to be substituted as plaintiff herein, having come on for hearing this 29th day of September, 1947, and it appearing to the Court that said petitioner is the duly appointed, qualified and acting Housing Expediter; that by virtue of Executive Order 9841 (12 F. R. 2645) issue by the President of the United States on April 23, 1947, said petitioner has been invested with all of the functions with respect to rent control of the Temporary Controls Administrator, Office of Temporary Controls, with full power and authority to continue and maintain in his name all civil proceedings heretofore instituted or maintained by the Temporary Controls Administrator; that there is substantial need for continuing and maintaining this action; and that defendants have been given due notice of this application:

Now, Therefore, It Is Hereby Ordered, that said petitioner in his [11] capacity as Housing Expediter, be and is hereby substituted as party plaintiff herein, in the place and stead of Philip B. Fleming, Temporary Controls Administrator of the Office of Temporary Controls.

Dated this 29th day of September, 1947.

/s/ LEON R. YANKWICH,
Judge United States District Court.

[Endorsed]: Filed Sept. 29, 1947.

[12]

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS
PURSUANT TO RULE 36

Plaintiff, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requests the defendants John McCord and Florence McCord, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That one, Tighe E. Woods, is Housing Expediter of the Office of the Housing Expediter, an agency of the United States Government.

2. That Tighe E. Woods, Housing Expediter, is the successor in office to Frank R. Creedon, Housing Expediter.

3. That Frank R. Creedon, Housing Expediter, was the successor in office to Philip B. Fleming, Administrator, Office of Temporary Controls, in so far as functions related to Federal Rent Control are concerned.

4. That by his appointment to the position of Housing Expediter, Tighe E. Woods, became invested with all the functions relating to Federal [13] Rent Control of litigation formerly vested in Philip B. Fleming, Administrator, Office of Temporary Controls.

5. That Paragraph One of plaintiff's complaint in the above captioned action states, among other things, that plaintiff brings this action pursuant to Section 205(a) to enforce compliance with Sec-

tion 4 of the Emergency Price Control Act of 1942, as amended.

6. That as of the date of the filing of the above captioned action, Philip B. Fleming was the duly acting and appointed Administrator of the Office of Temporary Control.

7. That as of the date of the filing of the above captioned action, Philip B. Fleming, Administrator, was authorized to maintain, commence and continue litigation brought pursuant to the provisions of the Emergency Price Control Act of 1942, as amended.

8. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the Office of Price Administration at Los Angeles reporting the rent on the maximum rent date for Unit No. 205 at 948 South Figueroa Street, Los Angeles, California, as \$32.50 per month.

9. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the Office of Price Administration at Los Angeles reporting the rent on the maximum rent date for Unit No. 207 at 948 South Figueroa Street, Los Angeles, as \$45.00 per month.

10. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a

registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 208 at 948 South Figueroa Street, Los Angeles, at \$7.00 per week.

11. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles [14] reporting the rent on the maximum rent date for Unit No. 210 at 948 South Figueroa Street, Los Angeles, at \$55.00 per month.

12. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 216 at 948 South Figueroa Street, Los Angeles, as \$55.00 per month.

13. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 217 at 948 South Figueroa Street, Los Angeles, as \$32.50.

14. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area

Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 305 at 948 South Figueroa Street, Los Angeles, as \$35.00 per month.

15. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 312 at 948 South Figueroa Street, Los Angeles, as \$35.00 per month.

16. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord, filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 405 at the above address as \$35.00.

17. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord, filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 315 at the above address as \$35.00 per month. [15]

18. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 407 at the above address as \$50.00 per month.

19. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 411 at the above address as \$37.50 per month.

20. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 505 at the above address as \$32.50 per month.

21. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 507 at the above address as \$50.00 per month.

22. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 510 at the above address as \$50.00 per month.

23. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent

Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 511 at the above address as \$35.00 per month.

24. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as agent of the defendant John McCord filed a registration [16] of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 605 at the above address as \$35.00 per month.

25. That on or about February 14, 1946 the defendant Florence McCord for and on behalf and as the agent of the defendant John McCord filed a registration of rental dwellings with the Area Rent Office of the OPA at Los Angeles reporting the rent on the maximum rent date for Unit No. 615 at the above address as \$37.50 per month.

26. That the above registrations of rental dwellings were filed by the defendant as a result of a suit for injunction to compel such filings brought against the defendants by the plaintiff's predecessor in office.

27. That the figures set forth in the statement attached to the complaint under the column heading "amount paid" and "Period of Overcharges commencing" are true, including periods of time set forth.

28. That the names of the tenants set forth in a statement attached to the complaint under the column heading "name of tenant" are correct.

29. That at all periods of time set forth in the table attached to the complaint the defendant John

McCord was the landlord of the premises described in the complaint.

30. That at all periods of time set forth in the table attached to the complaint the defendant Florence McCord was the landlord of the premises described in the complaint.

31. That as of the date of filing of this suit more than thirty days elapsed since the demand and receipt of the rent set forth in the statement attached to the complaint.

32. That at the date of the institution of this suit all of the tenants whose names are set forth in the statement attached to the complaint have failed to institute any action pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, pertaining to the demand and receipt of rent set forth in the statement attached to the complaint.

Dated Los Angeles, California, this 26th day of December, 1947.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ BENJAMIN CHAPMAN,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Dec. 29, 1947.

[17]

[Title of District Court and Cause.]

ANSWER TO PLAINTIFF'S REQUEST FOR
ADMISSIONS OF DECEMBER 26, 1947,
PURSUANT TO RULE 36

Defendants John McCord and Florence McCord in answer to plaintiff's request for admissions pursuant to Rule 36 of the Rules of Civil Procedure, make the following admissions, denials and allegations in answer to the matters set forth in plaintiff's request in the order therein set forth:

Paragraphs 1 through 25 inclusive are admitted by defendants.

26. Denied.

27. Admitted except as follows:

(1) That if in computing the periods of time set forth in the column headed "Period of Overcharges commencing," any of such periods extend beyond March 22, 1946, the same are specifically denied to any period extending beyond [19] March 22, 1946;

(2) That as to Units No. 207, 210, 304, 407, 510 and 511, they are neither admitted nor denied for the reason that the matters of fact therein set forth are not relevant, in that the claims allegedly arising in respect to those units have heretofore, and

prior to the filing of the complaint in this action, been adjudicated and disposed of.

Paragraphs 28 through 31 inclusive are admitted by defendants.

32. Specifically denied.

DESSER, RAU,
CHRISTENSEN & HOFFMAN,

By /s/ DAVID M. HOFFMAN,
Attorneys for Defendants.

(Affidavit of Service by Mail attached.)

(Duly Verified.)

[Endorsed]: Filed Jan. 9, 1948. [20]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
UNDER RULE 56

To: Defendants, John McCord and Florence McCord, and their Attorney, David M. Hoffman, Esq.

Pursuant to subsection (a) of Rule 56, the undersigned will move this Court in the Court room of the Honorable Leon R. Yankwich, in the Federal Building, 312 North Spring Street, Los Angeles, California, on February 9, 1948 at 10 o'clock a.m., or as soon thereafter as counsel can be heard:

(a) For summary judgment in favor of plaintiff's entire claim: or

(b) In the alternative, pursuant to subsection

(d) of Rule 56, if judgment is not rendered upon the whole case or for all the relief asked and a trial is found to be necessary, that the Court make an order specifying the facts that appear without substantial controversy and directing such further proceedings as are just.

This motion is based upon the following papers and documents on file:

- (a) The complaint. [23]
- (b) The answer.
- (c) Plaintiff's request for Admissions.
- (d) Defendants' answers to plaintiff's request for admissions.
- (e) This motion and notice of motion.
- (f) Proposed findings of fact pursuant to Local Rule 3(d)(2).
- (g) Memorandum of Points and authorities.

Dated at Los Angeles, California, this 26th day of January, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,

By /s/ CASSEL JACOBS,
Attorneys for Plaintiff. [24]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

1. Defendants' answer to plaintiff's request for admission shows that there is no fact in dispute and consequently plaintiff is entitled to a summary judgment.

Rule 56, Civil Rules of Procedure.

2. The "Chandler Defense" is an affirmative defense and the burden of proof to establish it is upon defendant.

Bowles v. Batson (W. Dist. S. Car. 1945)
61 F. Supp. 839, 844 Aff'd. 154 F. 2d 566.

Dated at Los Angeles, California, this 26th day of January, 1948.

Respectfully submitted:

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,

By /s/ CASSEL JACOBS,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Jan. 26, 1948.

[25]

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT

1. The defendants, John McCord and Florence McCord are the owners of the housing accommodations known as the Belmont Apartments, located at 948 South Figueroa Street, Los Angeles, California.

2. The defendants, John McCord and Florence McCord received respectively from the following tenants as rent for the following apartments in said apartment house, the following rents, for the following periods of time, during which the following legal maximum rents were respectively in effect under the Emergency Price Control Act of 1942, as amended, resulting in the following overcharges respectively: [27]

| Unit | Name of Tenant | Legal Maximum Rent | Amount Paid | Period of Over- charge Commencing | Amount of Overcharge |
|------|--|-----------------------|----------------|--------------------------------------|-------------------------|
| 205 | Mary E. O'Shea..... | \$32.50 Mo. | \$10.00 Wk. | 8/15/45, for 31 weeks | \$ 79.50 |
| 207 | H. Herrmann | 45.00 Mo. | 15.00 Wk. | 10/ 1/43, for 132 weeks | 608.52 |
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| 210 | Allen D. Bull..... | 55.00 Mo. | 22.50 Wk. | 4/28/44, for 99 weeks | 970.20 |
| 216 | M. Louisa Riley..... | 55.00 Mo. | 20.00 Wk. | 10/24/45, for 13 weeks | 94.90 |
| 217 | J. M. Reardon..... | 32.50 Mo. | 10.00 Wk. | 8/ 3/45, for 33 weeks | 82.50 |
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| 405 | Catherine Carroll | 35.00 Mo. | 10.00 Wk. | 3/27/45, for 51 weeks | 97.93 |
| 407 | Fern Boltz | 50.00 Mo. | 18.00 Wk. | 8/15/44, for 83 weeks | 535.35 |
| 411 | Nettie Simms, Janice Erickson..... | 37.50 Mo. | 12.50 Wk. | 10/16/44, for 74 weeks | 284.16 |
| 505 | Norma G. Sessums..... | 32.50 Mo. | 40.00 Mo. | 9/14/44, for 13 months | 97.50 |
| 505 | Mrs. J. Northledge..... | 32.50 Mo. | 10.00 Wk. | 10/20/45, for 21 weeks | 52.50 |
| 507 | George F. Corbett..... | 50.00 Mo. | 20.00 Wk. | 2/ 9/46, for 5 weeks | 42.25 |
| 510 | Eileen J. Meloy..... | 50.00 Mo. | 22.50 Wk. | 2/15/44, for 83 weeks | 908.85 |
| 511 | H. H. Tubbs..... | 35.00 Mo. | 10.00 Wk. | 9/16/44, for 78 weeks | 149.76 |
| 605 | Mariah K. Sutherland, Marie Knapp..... | 35.00 Mo. | 10.00 Wk. | 6/30/44, for 80 weeks | 153.60 |
| 615 | J. B. Fordyce | 37.50 Mo. | 12.50 Wk. | 9/28/44, for 77 weeks | 295.68 |

Total.....\$5,530.72

Dated at Los Angeles, California this .. day
of January, 1948.

Respectfully submitted:

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,

By /s/ CASSEL JACOBS,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 26, 1948.

[29]

[Title of District Court and Cause.]

DEFENDANTS' REQUEST FOR
ADMISSIONS PURSUANT
TO RULE 36

Defendants, pursuant to Rule 36 of the Federal Rules of Civil Procedure, request the plaintiff Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That there were no rents charged by defendants in excess of the maximum rents established by the rent regulations for housing on any of the premises set forth in the complaint within a one (1) year period prior to the filing of the complaint by the plaintiff on March 27, 1947.

2. That on December 15, 1942, the defendants did file [30] with the Los Angeles Area Rent Office of the Office of Price Administration a registration as required by the Emergency Price Control Act of 1942, as amended, and the Rent Regulations for Hotels and Rooming Houses, which registration was on the forms and blanks furnished by the Office of Price Administration for hotels and rooming houses, and that said registration was accepted by said Area Rent Office.

3. That no rejection of said registration was made by the Los Angeles Area Rent Office of the Office of Price Administration until February 1946.

4. That the rents charged by defendants for the premises set forth in the complaint during the period from December 15, 1942, to February 1946, were in accordance with the rental rates set forth upon the registration forms filed with the Los Angeles Area Rent Office of the Office of Price Administration for hotels and rooming houses by the defendants on December 15, 1942.

5. That upon being notified of the rejection of the registration filed on December 15, 1942, by the defendants and upon demand by the Los Angeles Area Rent Office of the Office of Price Administration, the defendants did on or about the 14th day of February, 1946, file a new registration under the rent regulations for housing, which registration was accepted by said office on said date.

6. That the rents charged by the defendants from and after February 14, 1946, were in accordance with the registration forms filed with the Los

Angeles Area Rent Office of the Office of Price Administration for hotels and rooming houses by the defendants on February 14, 1946.

7. That in the schedule attached to the plaintiff's complaint and referred to in Paragraph VI therein, the alleged overcharges for the following named persons and units of occupancy have resulted in actions filed by said persons and have [31] all been adjusted, satisfied and dismissed:

- (a) No. 207—H. Herrmann.
- (b) No. 210—Allen D. Bull.
- (c) No. 304—M. P. Anderson.
- (d) No. 407—Fern Boltz.
- (e) No. 510—Eileen J. Meloy.
- (f) No. 511—H. H. Tubbs.

Dated at Los Angeles, California this 26th day of January, 1948.

DESSER, RAU,
CHRISTENSEN & HOFFMAN,

By /s/ DAVID M. HOFFMAN,
Attorneys for Defendants

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Jan. 27, 1948.

[32]

[Title of District Court and Cause.]

AMENDMENT TO DEFENDANTS' REQUEST
FOR ADMISSIONS, PURSUANT TO RULE
36, FEDERAL RULES OF CIVIL PRO-
CEDURE

On January 26, 1948, defendants, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requested plaintiff Frank R. Creedon to make certain admissions set forth therein in Paragraphs 1, 2, 3, 4, 5, 6 and 7. Since filing of said request, defendants have discovered that there was a typographical error in question 6 therein propounded, and, therefore, defendants at this time wish to amend and clarify question 6 and do, pursuant to Rule 36 as set forth, request the plaintiff to make the following additional admission for the purpose of this action only, subject to all pertinent objections to admissions which may be interposed at the trial:

6. That the rents charged by the defendants from and after February 14, 1946, were in accordance with [34] the registration forms filed on February 14, 1946, with and accepted by the Los Angeles Area Rent Office of the Office of Price Administration.

Dated: At Los Angeles, California, this 2nd day of February, 1948.

DESSER, RAU,
CHRISTENSEN & HOFFMAN,

By /s/ DAVID M. HOFFMAN,
Attorneys for Defendants.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 3, 1948. [35]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the parties hereto by their respective attorneys that the plaintiff's reply to defendants' request for admissions, heretofore served on defendants' attorneys but not filed in the office of the clerk of the court, may now be filed with the said chief clerk for the purpose of completing the record on appeal.

Dated September 10, 1948.

ABE I. LEVY,
FRANK L. HIRST,
STEPHEN D. MONAHAN,
RICHARD G. SOLOF,

By /s/ STEPHEN D. MONAHAN,
Attorneys for Plaintiff.

DESSER, RAU,
CHRISTENSEN & HOFFMAN,

By /s/ DAVID M. HOFFMAN,
Attorneys for Defendants.

[Endorsed]: Filed Sept. 13, 1948. [37]

[Title of District Court and Cause.]

ORDER

Upon stipulation of the parties hereto and good cause appearing therefor,

It is ordered that the plaintiff's reply to defendants' request for admissions, heretofore served on

defendants' attorneys but not filed in the office of the clerk of this court, may now be filed by said clerk and be included in the record on appeal to the ninth circuit court of appeals.

Dated this 13th day of September, 1948.

/s/ LEON R. YANKWICH,
Judge United States District
Court.

[Endorsed]: Filed Sept. 13, 1948. [38]

[Title of District Court and Cause.]

REPLY TO DEFENDANTS' REQUEST FOR
ADMISSIONS

State of California,
County of Los Angeles—ss.

Plaintiff in answer to the defendants' request for admissions pursuant to Rule 36 of the Rules of Federal Procedure, makes the following admissions, denials and allegations:

1. Plaintiff cannot truthfully admit or deny the statement contained in Paragraph 1 inasmuch as the files and records of the plaintiff neither disclose that there were any rents charged by the defendants in excess of the maximum rent established by the Rent Regulation for Housing during the period set forth in said paragraph, nor do said files and records disclose that there were not any excessive rents charged by said defendants during said period.

2. Plaintiff cannot truthfully admit or deny the statements contained in Paragraph 2 as said statements contained more than one statement of fact. By way of partial admissions the plaintiff admits that on December 15, 1942, the [39] defendant, John McCord, did file with the Los Angeles Area Rent Office of the Office of Price Administration, three Registration forms designated as DH-D forms, said forms having been provided by said Office of Price Administration for use by landlords of accommodations subject to the Rent Regulation for Hotels and Rooming Houses in filing a statement of maximum rents, said forms having been furnished to all persons requesting same; said Registration forms filed by said John McCord permitted to be filed by Area Rent Office on or about said December 15, 1942.

3. Plaintiff denies the statement contained in Paragraph 3. Plaintiff states that for several months prior to July 31, 1945, efforts were made by the Office of Price Administration to obtain information from the defendant, John McCord, in order to make a determination on said defendant's request to bring his accommodations under the Rent Regulation for Hotels and Rooming Houses, and that on said July 31, 1945, a letter from said Office of Price Administration advised said defendant that his petition was denied and he was requested to contact the Compliance Section of said Area Rent Office for re-registration under the Housing Regulation. Said denial was incorporated in a formal order issued on August 9, 1945.

4. Plaintiff cannot truthfully admit the statements contained in Paragraph 4, or deny such statements. However, the plaintiff does state that insofar as records of the plaintiff disclose the statements in Paragraph 4 are correct. However, such records do not contain any data concerning the rents charged by the defendants prior to October 1, 1943, and therefore insofar as said period of time from December 15, 1942, to October 1, 1943, is concerned said statements in Paragraph 4 are denied.

5. Plaintiff cannot truthfully admit or deny the statements contained in Paragraph 5 since said paragraph contains more than one statement of fact. Plaintiff states that the defendant, John McCord, was notified of said rejection as early as July 31, 1945, and again on August 9, 1945. Plaintiff admits that pursuant to the demand of the Los Angeles Area Rent Office of the Office of Price Administration, the defendants did file on or about the 14th day of February, 1946, new registrations under the Rent Regulation for Housing. Plaintiff further [40] states that said registrations were filed on said date as the result of the institution of a Complaint for Injunction in the Superior Court of the State of California, in and for the County of Los Angeles, on December 13, 1945, said action being No. 508454; said action being for the purpose of requiring a registration under the Rent Regulation for Housing for the accommodations at 948 South Figueroa, Los Angeles, California. Plaintiff admits that said registrations were permitted to be filed by said Los Angeles Area Rent Office.

6. Plaintiff denies the statements contained in Paragraph 6.

7. Plaintiff denies the statements contained in Paragraph 7 with the exception of Sub-Division b, for the reason that the plaintiff is without sufficient information to admit the remaining portion of said paragraph. Plaintiff, however, will not require proof of satisfaction, adjustments, or dismissal as to the claims enumerated therein at the trial of this case if the defendant will furnish plaintiff informally sufficient evidence prior to the time of trial.

Dated this 9th day of February, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN.
FRANK L. HIRST,

By /s/ FRANK L. HIRST,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 13, 1948. [41]

[Title of District Court and Cause.]

AFFIDAVIT OF FLORENCE McCORD IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

Florence McCord, being first duly sworn deposes and says:

1. That she is one of the defendants in the above entitled action, and makes this affidavit for herself and for all the other defendants, and that she has

personal knowledge of all the matters herein, and defendant would testify to the matters stated herein.

2. That on December 15, 1942, the defendants did file with the Los Angeles Area Rent Office of the Office of Price Administration a registration as required by the Emergency Price Control Act of 1942, as amended, and the rent regulations for hotels and rooming houses, which registration was on the forms and [42] blanks furnished by the Office of Price Administration for hotels and rooming houses, and that said registration was accepted by said Area Rent Office.

3. That in applying to the said Area Rent Office, your affiant made full disclosure to the said office of the nature of the premises, which are the subject matter of this action, and of the various and several functions therein carried on and of the specific nature and extent of the use, occupancy and operation of the premises, and that it was after such disclosure and information to the said Area Rent Office that the said Office did give to your affiant the hotel and rooming house registration forms, which were completed and filed, as set forth in Paragraph 2 above.

4. That the said registration was received and accepted by the Los Angeles Area Rent Office of the Office of Price Administration, and no further action was taken thereon by said office until February, 1946, when said registration was rejected.

5. That the rents charged by the defendants for the premises set forth in the complaint during the period from December 15, 1942, to February 14, 1946, were in accordance with the rental rates set forth on the registration of December 15, 1942, filed

with the Los Angeles Area Rent Office of the Office of Price Administration for hotels and rooming houses.

6. That upon being notified of the rejection of the registration filed on December 15, 1942, and upon demand by the Los Angeles Area Rent Office of the Office of Price Administration, the defendants did, on or about the 14th day of February, 1946, file a new registration under the rent regulations for housing, which registration was accepted by the said office on said date.

7. That the rents charged by the defendants from and after February 14, 1946, were in accordance with the registration of February 14, 1946, filed with the Los Angeles Area Rent Office [43] of the Office of Price Administration for housing accommodations.

8. That there were no rents charged by the defendants in excess of the maximum rents established by the rent regulations for housing on any of the premises set forth in the complaint within one (1) year prior to the filing of the complaint by the plaintiff on March 27, 1947.

9. That in the schedules attached to the plaintiff's complaint, the plaintiff refers in Paragraph VI, to the alleged overcharges for the following named persons and units of occupancy, all of which have heretofore resulted in actions filed by said persons, and all of which have been adjusted, satisfied and dismissed:

A. No. 207—H. Herrmann

B. No. 210—Allen D. Bull

C. No. 304—N. P. Anderson

D. No. 407—Fern Boltz

E. No. 510—Eileen J. Meloy

F. No. 511—H. H. Tubbs.

10. That the registration filed by the defendants on December 15, 1942, was done in good faith and upon the belief that such registration was proper and accurate and the correct registration to file on the premises involved, and that the defendants did not intend to make any improper or illegal charges and that neither the filing of the said registration nor the collection of rents under said schedules therein were either willful or the result of the failure to take practical precautions against the commission of any violations of the Emergency Price Control Act of 1942, as amended, and the rent regulations issued thereunder.

11. That the defendants did everything humanly possible to comply with the provisions of the Emergency Price Control Act of 1942, as amended, and the rental regulations issued thereunder, and had no knowledge nor way of knowing that there might be a violation of the said Act until the rejection of the registration [44] by the said Area Rent Office on February 14, 1946.

/s/ FLORENCE McCORD,

Affiant.

Subscribed and sworn to before me this 2nd day of February, 1948.

(Seal) /s/ DOROTHY PEASLEY,

Notary Public in and for said County and State.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 3, 1948. [45]

[Title of District Court and Cause.]

STIPULATION AND AMENDMENT TO
DEFENDANTS' ANSWER

It is hereby stipulated between the parties, through their respective attorneys, that the Answer of the defendants be and is hereby amended and supplemented to add the following:

And for a further, separate and distinct defense to plaintiff's complaint, defendants allege that:

I.

That the plaintiff has been guilty of laches and unreasonable delay in bringing this action and in making the charges against the defendants in that in failing to proceed with due diligence and rejecting the application which was filed in good faith by the defendants on December 15, 1942, that by said failure to reject said registration until February 14, 1946, defendants have been greatly and irreparably injured and harmed.

And for a further, separate and distinct defense to [47] plaintiff's complaint, defendants allege that:

I.

That the plaintiff should be estopped from bringing and prosecuting this action and denied relief because the plaintiff has been guilty of great delay, and by failing to reject the registration filed by defendants on December 15, 1942 until the very late date of February 14, 1946, the plaintiff has lulled the defendants into a false sense of security and belief of the correctness of their registration, and

by his dilatory and unjustifiable delay, has caused the defendants great and irreparable harm and injury.

Upon filing said registration by the defendants, it became the duty of the Office of Housing Expediter to advise the defendants within a reasonable time that said registration was not acceptable, if it were not acceptable, and by having failed to reject said registration and so advise the defendants, the plaintiff should be estopped from now complaining of an alleged wrong which the defendants had no way of knowing that there might be a violation, and for which they had taken every practical precaution against the commission of any violation of the Emergency Price Control Act of 1942, as amended.

And for a further, separate and distinct defense to plaintiff's complaint, defendants allege that:

I.

The defendants were no longer the owners of the premises in question and had sold said premises on or about April 1, 1946, some eleven months prior to the filing of the cause of action by the plaintiff, and that at said time of the filing of the action by the plaintiff, the defendants were not and could not have been violating the law and, therefore, the Court could not, as a court of equity, have issued an injunction restraining the defendants from violating the law and, therefore, the Court in [48] this matter is without equitable jurisdiction.

Wherefore, defendants pray that plaintiff take

nothing by his action; that the defendants be awarded their costs of suit; and for other and further relief as the Court deems just.

It Is Stipulated and Agreed by and between the parties hereto that the foregoing Stipulation and Amendment to defendants' Answer be without prejudice to the plaintiff's right to move the Court to dismiss and/or strike Amendment to defendants' Answer at the time of trial without any notice whatsoever.

DESSER, RAU,
CHRISTENSEN & HOFFMAN,
By /s/ DAVID M. HOFFMAN,
Attorneys for Defendants.

Dated February 4, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,
By /s/ FRANK L. HIRST,
Attorneys for Plaintiff.

It is so ordered this February 6, 1948.

/s/ PAUL J. McCORMICK,
Judge, United States District Court.

[Endorsed]: Filed Feb. 6, 1948.

[49]

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF FLORENCE McCORD IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

Florence McCord, being first duly sworn deposes and says:

12. That she and the other defendant, John McCord her husband, were the lessees of the premises in question known as the Belmont Apartment Hotel and operated said premises under said master lease from July 1, 1941, until April 1, 1946, at which later date the defendants' interest in said lease was sold through escrow and the purchasers of said interest in said lease took possession of the premises and continued to operate the same from April 1, 1946.

13. That at all times the defendant and her husband lived in the City of Ontario, California, and that while the defendants had a manager in the premises at the Belmont Apartment [50] Hotel in the City of Los Angeles, California and the said manager supposedly forwarded all mail and communications to the defendants, the defendants had learned since that there had been communications and correspondence which had not been received by them which was directed to them at the Belmont Apartment Hotel, and that not only was their delay caused by this situation, but that some of the matters referred to in the various pleadings and documents of the Office of Price Administration had not been received by them.

14. That the defendants thought it best, on the advice of counsel, for their protection and for the interest and welfare of all parties concerned that the inspection of their records and books be done under a court order, and it was for this reason that the defendants required the administrator to obtain a Subpoena Duces Tecum and that immediately upon the issuance of said Subpoena, the defendants made available all of their books and records to the administrator.

15. That the defendants have at all times sought to comply with the request of the administrator and notwithstanding there remaining justifiable issue of whether or not the premises in question were a hotel, defendants did re-register the premises as quickly as humanly possible in accordance with the procedures of the administrator. That it was not until February 28, 1946, that the administrator actually notified the defendants that the registration made on December 15, 1942, was void and of no effect, and this was done as an administrative procedure by the administrator and not a judicial determination by a court.

Dated February 9, 1948.

/s/ FLORENCE McCORD,

Affiant.

Subscribed and sworn to before me this 9th day of February, 1948.

(Seal) /s/ DOROTHY PEASLEY,

Notary Public in and for said County and State.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 10, 1948.

[51]

At a stated term, to wit: The February Term. A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 10th day of February, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

For (1) hearing motion of plaintiff filed Jan. 26, 1948, for summary judgment, and (2) for trial; Frank L. Hirst, Esq., appearing as counsel for plaintiff; David M. Hoffman and Jack Lande, Esqs., appearing as counsel for defendants; defendants' trial memo., defendants' supplemental points and authorities in opposition to motion for summary judgment, and supplemental affidavit of F. McCord in opposition to motion are filed.

Court orders cause continued to 2 p.m. for further proceedings.

At 2 p.m. court reconvenes herein and all being present as before, Court orders that Woods, etc., is substituted as plaintiff herein.

Court orders motion for summary judgment denied.

Attorney Hirst makes a statement and Attorney Hoffman makes a statement.

Louis M. Noyes is called, sworn and testifies for plaintiff. Plaintiff's Exhibits 1, 2, 3 and 4 are admitted in evidence.

Florence McCord is called, sworn and testifies for plaintiff as adverse witness. Plaintiff rests. Florence McCord testifies further in her own behalf. Defendants rest. Attorneys Hirst and Lande argue to the Court.

Court finds in favor of defendants and against plaintiff, and directs counsel for defendants to prepare findings and judgment. [53]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 10th day of January, 1948, in the District Court of the United States, Southern District of California, Central Division, before the Honorable Leon R. Yankwich, Judge Presiding, sitting without a jury, Frank L. Hirst, Esq. appearing as attorney for plaintiff, and Messrs. Desser, Rau, Christensen & Hoffman, by Messrs. David M. Hoffman and Jack J. Lande, appearing for defendants, and the case having been dismissed against Doe I and Doe II, and oral and documentary evidence having been introduced on behalf of both parties, and the Court having considered the same and heard the arguments of counsel, and being fully advised, makes the following

FINDINGS OF FACT:

I.

The allegations contained in paragraphs I, II, III and IV of plaintiff's complaint are true. [54]

II.

The allegations contained in paragraph V of plaintiff's complaint are untrue, except that defendants were the lessees of the described property prior to April 1, 1946.

III.

The allegations contained in paragraph VI of plaintiff's complaint are untrue.

IV.

The allegations contained in paragraph VII of plaintiff's complaint are true, except as to H. Herrmann, Unit 207; Allen D. Bull, Unit 210; M. P. Anderson, Unit 304; Fern Boltz, Unit 407; Eileen J. Meloy, Unit 510; and H. H. Tubbs, Unit 511; and as to said persons and units, actions have been heretofore instituted and have been settled, compromised, dismissed and disposed of, and there is no further right of any kind whatever in said described and enumerated persons and units.

V.

The allegation contained in paragraph VIII of plaintiff's complaint has heretofore been dismissed by this Court.

VI.

The allegations and denials contained in paragraph I of defendants' answer of August 15, 1947, are true.

VII.

It is true that plaintiff's complaint fails to state a claim against defendants upon which relief can be granted.

VIII.

It is true that the action has been barred by the provisions of Section 925(e), Title 50 of the United States Code.

IX.

It is true that defendants' actions were neither willful, fraudulent nor the result of failure to take practical precautions. [55]

X.

It is true that plaintiff has been guilty of unreasonable delay in making the charges against defendants and proceeding thereon, and that defendants have been greatly and irreparably injured and harmed thereby.

XI.

It is true that plaintiff should be denied relief because of delay and great and irreparable injury to defendants.

XII.

It is true that defendants were not the owners of the premises subsequent to April 1, 1946; it is true that defendants were not violating the law, and the Court should not, as a court of chancery, issue an injunction against defendants; and it is further true that the Court should not exercise its equitable jurisdiction nor order restitution or any other relief.

XIII.

It is true that defendants are not guilty of fraud or concealment, and that plaintiff has been guilty of such delay as would cause it to be inequitable to make any other order against defendants.

Except as otherwise hereinabove specifically set forth, none of the allegations of the complaint are true and all of the allegations of the answer and amended supplemental answer are true.

CONCLUSIONS OF LAW

From the foregoing facts, the Court makes the following conclusions of law:

I.

Plaintiff is not entitled to judgment against defendants, and shall take nothing by this action.

Dated April 30, 1948.

/s/ LEON R. YANKWICH,
Judge.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 30, 1948.

[56]

In the District Court of the United States for the
Southern District of California, Central Division

No. 6656-Y

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

JOHN McCORD and FLORENCE McCORD,
DOE I and DOE II,

Defendants.

JUDGMENT

The above entitled cause came on regularly for trial on January 10, 1948, in the District Court of the United States for the Southern District of California, Central Division, before the Honorable Leon R. Yankwich, Judge Presiding, sitting without a jury, Frank L. Hirst, Esq. appearing as attorney for plaintiff, and Messrs. Desser, Rau, Christensen & Hoffman, by Messrs. David M. Hoffman and Jack J. Lande, appearing as attorneys for defendants, and evidence, both oral and documentary, having been introduced, and the cause submitted for decision, and the Court having heretofore made and caused to be filed its written findings of fact and conclusions of law,

It Is Ordered, Adjudged and Decreed that plaintiff shall take nothing by this action.

Dated April 30, 1948.

/s/ LEON R. YANKWICH,
Judge.

Judgment entered April 30, 1948. Docketed April 30, 1948. C. O. Book 50, Page 464. Edmund L. Smith, Clerk. By John A. Childress, Deputy.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 30, 1948. [58]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the entire final judgment entered in this action on the 30th day of April, 1948.

Dated this 25th day of June, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST
RICHARD G. SOLOF,
CASSEL JACOBS,
BENJAMIN CHAPMAN,

By /s/ FRANK L. HIRST,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed June 28, 1948. [60]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF
RECORD ON APPEAL

Appellant Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, hereby designates for inclusion in the record on appeal, the complete record of all the proceedings and evidence in the above action, including the entire reporter's transcript and all exhibits.

Dated this ... day of August, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,
CASSEL JACOBS,
BENJAMIN CHAPMAN,

By /s/ FRANK L. HIRST,
Attorneys for Plaintiff and Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 3, 1948.

[62]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
THE RECORD ON APPEAL AND
DOCKETING THE APPEAL

On application of the plaintiff and appellant herein, and good cause appearing therefor, It Is Hereby Ordered that the time for filing the record

on appeal and docketing the appeal in the above entitled action is extended to and including September 16, 1948.

Dated this 4th day of August, 1948.

/s/ BEN HARRISON,
Judge, United States District Court.

[Endorsed]: Filed Aug. 4, 1948. [64]

[Title of District Court and Cause.]

ORDER TO SEND UP ORIGINAL EXHIBITS

On motion of Stephen D. Monahan, Esq., attorney for plaintiff and appellant,

It Is Ordered that the original transcript of evidence and original exhibits in the above entitled cause be transmitted by the clerk of this court as a part of the record on appeal to the clerk of the ninth circuit court of appeals, at Los Angeles, California, to be safely kept by him and returned to this court upon final determination of this action in said appellate court.

Dated this 13th day of September, 1948.

/s/ LEON R. YANKWICH,
Judge, United States District Court.

[Endorsed]: Filed Sept. 13, 1948. [65]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 65, inclusive, contain full, true and correct copies of Complaint for Treble Damages and Injunction; Answer; Order Substituting Party Plaintiff; Plaintiff's Request for Admissions Pursuant to Rule 36; Answer to Plaintiff's Request for Admissions of December 26, 1947, Pursuant to Rule 36; Motion for Summary Judgment Under Rule 56; Proposed Findings of Fact; Defendants' Request for Admissions Pursuant to Rule 36; Amendment to Defendants' Request for Admissions Pursuant to Rule 36; Stipulation; Order dated September 13, 1948; Reply to Defendants' Request for Admissions; Affidavit of Florence McCord in Opposition to Motion for Summary Judgment; Stipulation and Amendment to Defendants' Answer; Supplemental Affidavit of Florence McCord in Opposition to Motion for Summary Judgment; Minute Order Entered February 10, 1948; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Appellant's Designation of Record on Appeal and Order Extending Time to File Record and Docket Appeal

which, together with original plaintiff's Exhibits 1, 2, 3 and 4 and a copy of the reporter's transcript, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 14th day of September, A. D. 1948.

(Seal) EDMUND L. SMITH,
Clerk.

[Endorsed]: No. 12039. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. John McCord and Florence McCord, Appellees. Transcript of Record. Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 20, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12039

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

JOHN McCORD, FLORENCE McCORD, DOE I
and DOE II,

Defendants.

STATEMENT OF POINTS ON APPEAL

The following are the Points upon which Appellant intends to rely upon the appeal:

1. The lower Court erred in holding that failure of the tenants to bring an action under Section 205(c) of the Emergency Price Control Act as amended (50 U.S.C. App. 901 et seq.) within the statute of limitations of one year therein provided barred recovery in an action brought by the Housing Expediter under Section 205(a) of the Act.

2. The lower Court erred in holding that the one-year statute of limitations provided for in Section 205(c) of the Act barred restitution in an action brought by the Housing Expediter under Section 205(a) of the Act.

3. The lower Court erred in holding that the Office of the Housing Expediter, an agency of the

United States Government, is subject to the doctrine of laches in an action for restitution brought under Section 205(a) of the Act.

4. The lower Court erred in finding that plaintiff was guilty of unreasonable delay in filing suit against defendants.

5. The lower Court erred in finding that defendants have been greatly and irreparably injured by plaintiff's delay in bringing suit.

6. The lower Court erred in holding that the change in possession of the property and the payment of income taxes by defendants constituted such a change of condition on the part of defendants as to prevent recovery by plaintiff in an action for restitution under Section 205(a) of the Act.

7. The lower Court erred in finding that the condition of defendants had so changed as to make it inequitable to order restoration of the rent overcharges.

8. The lower Court erred in finding that defendants had not collected rents in excess of the maximum rents as alleged in paragraph 6 of the complaint and schedule attached thereto.

9. The lower Court erred in failing to accept as true all facts admitted by defendants in their answer to plaintiff's request for admissions pursuant to Rule 36 of the Federal Rules of Civil Procedure.

10. The lower Court erred in finding that plaintiff's complaint failed to state a claim upon which relief could be granted.

/s/ ED DUPREE,
General Counsel.

/s/ HUGO V. PRUCHA,
Assistant General Counsel.

/s/ BENJAMIN I. SHULMAN,
Special Litigation Attorney.

Dated this 30th day of September, 1948.

PROOF OF SERVICE

A true copy of the foregoing Appellant's Statement of Points on Appeal was air mailed, special delivery on September 30, 1948 to defendants' attorneys, Desser, Rau, Christensen & Hoffman, 325 West Eighth Street, Los Angeles 14, California.

/s/ BENJAMIN I. SHULMAN,
Special Litigation Attorney.

[Endorsed]: Filed Oct. 2, 1948. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF
RECORD ON APPEAL

Pursuant to Subdivision 6 of Rule 19 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, hereby designates for inclusion in the Record on Appeal, the complete record of all the proceedings and evidence in the above action, including the entire reporter's transcript and all exhibits.

/s/ ED DUPREE,
General Counsel.

/s/ HUGO V. PRUCHA,
Assistant General Counsel.

/s/ BENJAMIN I. SHULMAN,
Special Litigation Attorney.

Dated this 30th day of September, 1948.

PROOF OF SERVICE

A true copy of the foregoing Appellant's Designation of Record on Appeal was air mailed, special delivery on September 30, 1948 to defendants' attorneys, Desser, Rau, Christensen & Hoffman, 325 West Eighth Street, Los Angeles 14, California.

/s/ BENJAMIN I. SHULMAN,
Special Litigation Attorney.

[Endorsed]: Filed Oct. 2, 1948. Paul P. O'Brien,
Clerk.

In the District Court of the United States for the
Southern District of California, Central Division
Honorable Leon R. Yankwich, judge presiding.

No. 6656-Y

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

JOHN McCORD and FLORENCE McCORD,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

February 10, 1948

Appearances: For the Plaintiff: Frank L. Hirst,
Esq., Cassel Jacobo, Esq., Richard G. Solif, Esq.
For the Defendants: Desser, Rau, Christensen &
Hoffman, by Wm. Christensen, Esq., Jack Karen,
Esq., David M. Hoffman, Esq., Jack Lande, Esq.

Mr. Hirst: First I would like to dispose of the
motion which was set for yesterday; by stipulation
of counsel we continued that to the time of trial.
That was a motion for summary judgment.

The Court: I will deny the motion for summary
judgment. We will proceed with the trial of the
case. [2*]

* Page numbering appearing at foot of page of original
Certified Reporter's Transcript.

Mr. Hirst: Before we proceed I would like briefly to summarize the evidence which I think has already been disposed of by the pleadings in the action. As you will note, there has been a request for admissions filed by both parties to this action, and these requests are on file. In connection with the complaint itself, there is attached to the back of the complaint a schedule specifying the units in the action, the tenants, the amount paid, the period of overcharge, and the amount of overcharge.

The defendant by his admission has eliminated the necessity for much of the proof on the schedule attached and has admitted the various tenants' names were in fact the occupants of the rooms opposite their respective names, and paid the amount of rent indicated on the schedule, and were tenants during the period alleged with the exception that in no case did he admit occupants, I believe, beyond the 22nd day of March, 1946. [3]

Mr. Hoffman: I think that is correct.

Mr. Hirst: So in order to save the Court's time, the very purpose of the admission was to eliminate the necessity of bringing in the various tenants. The question here is one of the defendant, John McCord, having filed back in the very inception of the rent control, on December 15, 1942, a registration statement on the form provided for hotels and rooming houses, listing the various units of his establishment, and thereafter operating that establishment under that schedule until 1944.

We won't say definitely how the office became

aware of it, but there was a letter indicating Mr. McCord himself may have brought the matter before the attention of the agent, after which time, efforts were made to obtain registration under the regulation for housing distinguished from rent regulation for hotels and rooming houses.

Upon the determination that the establishment was in fact subject to housing regulations and not entitled to operate under the rent regulation for hotels and rooming houses, ultimately the defendant did file under the rent regulations for housing. These registrations for each of the units in the establishment were made on or about the 16th day of February, 1946. The defendant shortly thereafter sold the premises.

This action was not instituted until March 27, 1947, and [4] there is no question, your Honor, that by the very listing of the period covered by the overcharges, that the statute of limitations provided for in Section 205(e) of the Act have already run. The action itself is being prosecuted on the theory of the right of the Administrator to come before the Court in the case of overcharges and petition the Court to award restitution to the overcharged tenant. The issue as I see it, is the question of defense as raised as to the availability of laches, and estoppel, and so forth. We will offer proof by the representatives of the Office of the Housing Expediter relating to the records in the case, and the various filings in the matter. I don't believe there will be any other witnesses offered by the plaintiff.

Mr. Hoffman: Then general statement of counsel to the Court of the nature of this case is substantially correct, but I want to emphasize one or two points the defendant expects to prove.

First of all, if your Honor please, I believe the evidence will show that the defendant in this case, in accordance with the general instructions issued to all landlords who have property in the Los Angeles Defense Rental Area, that were required to register, I think, about the 15th of December, 1942 did, according to those instructions go down to the Area Rent Office. They told them what kind of establishment they had; that they had an establishment of 85 rooms, [5] and that they rendered services commonly rendered in hotels, such as desk and telephone service, and were given a form to register which they proceeded to do.

That registration was filed approximately the 15th of December, 1942. Pursuant to that registration and in accordance with the rents listed thereon, defendant collected rents not in any way in variance with that registration, but in accordance therewith, and continuing to do so during 1943, 1944 and 1945.

Now, along the line someone, some person or individual—I don't know how it started; we don't know how they decided that this establishment was not properly within the hotel registration—the evidence of which I am not even familiar with as to why it should not have been in a hotel rather than housing, but in any event it was improperly a hotel registration and should have been registered under a housing registration.

The Court: What did they call it?

Mr. Hoffman: What did they call this particular establishment?

The Court: Yes.

Mr. Hoffman: It was known as Belmont Apartment Hotel, at the time it was registered in 1942. In fact, it was known as that even before the OPA came into existence.

The Court: What kind of accommodation did they have? [6] Was there a bath connected with them?

Mr. Hoffman: I believe the evidence will show that they have rooms with baths and some kitchens, and furnished, and they were rented on a daily, weekly and monthly basis at the time that registration was filed. They could come in and rent on a daily, weekly, or monthly basis.

Now, if your Honor please, pursuant to the desires of the Office of Price Administrator, at that time the defendants re-registered, re-filed everything they have got on an entirely different basis, as required by the Office of Price Administration. They obtained a new registration which was filed the 16th day of February, 1946. And in accordance with this new registration the defendants now changed their rents to the entire tenants in accordance with this new registration. They maintained that until April 1st, 1946, at which time they ceased to be the owners and operators of the property, and have not been the owners and the operators of the property since April 1st, 1946. Now almost a year later, if the Court please, March 27, 1947,

a suit is instituted. This suit was under Section 205(e) and for an injunction, in the general form, and an allegation is contained, as the Court will recall in this complaint:

As plaintiff is informed and believes there were overcharges, which this court struck out on a motion when the matter was before your Honor, which leaves the treble damage [7] provision out. The court has stricken it out on the basis that it was an improper allegation but if the Court will review, as we have carefully reviewed, the periods of time set forth in the exhibit to the complaint, the Court will find as a matter of fact that none of the alleged overcharges therein came within a period within a year prior to the filing of this complaint. In other words, overcharges, if any, took place a year prior to March 27, 1947, and, therefore, as counsel very aptly points out, he cannot bring a treble damage action to recover.

They now take the stand that there was an erroneous registration, which they say was erroneous? We do not. In this case we do not because they simply followed instructions of the office. They are not asking for an injunction restraining the overcharges because there is nothing to restrain; they are not asking for treble damages. They are asking for one thing: They want this Court under what is claimed to be equity jurisdiction of the Court in this matter to order restitution to the tenants on these overcharges.

The Court: I have ruled on a lot of these matters. In the first place I have held that until the

Expediter is entitled to recover there is nothing out of which to make restitution. I have also held that restitution is also governed by the statute of limitations, because otherwise you would have a cause of action that was never outlawned. In equity, [8] where there is no limitation, we will consider the legal limitation as the equivalent of laches for which denial of the recovery will be granted. That is the law of California, which is still the federal law. If these are the facts of the case there is nothing to be tried, because an injunction cannot issue at the present time, because the person is no longer the owner.

Mr. Hirst: I want to call some authorities to your Honor's attention. I realize your Honor's position, as you have stated, but I would like to have time in which to cite some authorities.

The Court: I have seen your memorandum. Your memorandum does not cover this point at all.

Mr. Hirst: Yes, it does, so far as my consideration of the facts and the law. I refer to page 8 of the memorandum for trial which was filed just the last few days. *Woods v. Randolph* is the decision. I have not seen an exact copy of it, your Honor. I have been furnished with the summary of it. It is from the Circuit Court of the Fifth Circuit. It holds that restitution may be granted even though not requested by an indictment, or injunctive relief.

The Court: That is not the point. The point I am making is that restitution cannot be granted when the entire cause of action has lapsed.

Mr. Hirst: The cause of action is not based on Section [9] 205(e).

The Court: Then you have no cause of action.

Mr. Hirst: We are basing it on Section 205(a). In *Porter v. Warner Holding Co.*, the Supreme Court held that the court had equity jurisdiction in that case. The restitution was incident to injunctive relief, but the court held that the District Court had the authority to invoke equity jurisdiction for the purpose of making restitution on either of two bases: First, either as an equitable adjunct to an injunction decree or secondly, as an order necessary to enforce compliance with the Act.

We are asking the Court to restore the status quo here of the situation. He filed a registration form back in December, 1942 when the Court knows very well that millions of registrations were filed on or about that date and there was no opportunity to process them, and the statements of the landlord were filed in one registration and that did not establish the facts.

The Court: That is not the point. I understand that. I have read this case of *Blood v. Fleming*. That says nothing about the statute of limitations. The case turned on a summary judgment.

Mr. Hirst: In *Blood v. Fleming*—as I recall it, your Honor—I haven't got it in toto.

The Court: I have it here. [10]

Mr. Hirst: It definitely made the determination that the statute of limitations did not apply to a restitution suit. It stated that the only possible limitation was the question of laches, and the Cir-

cuit Court decision very definitely held that equitable relief was not one in which the statute of limitations was provided for as in Section 205(e).

The Court: For instance, in the case of *Kelly v. Bassett*, which was a famous case in which I happened to represent the plaintiff in that appeal, and it was before the higher courts, in that case the court held that even though two years and seven months had elapsed during which the plaintiff could sue the defendant because the defendant was a non-resident of California, therefore the statute of limitations did not apply. The statute of limitations was five years. Nevertheless she was barred by laches from asserting title.

Mr. Hirst: As I understand it, your Honor, laches is not necessarily tied up with the legal statute of limitations.

The Court: It all depends upon the particular case. Let us get the facts in and have them before us, and I will rule on the legal question as soon as the additional facts are put in.

Mr. Hirst: I will offer the official records, but I believe there is a stipulation going to be made as to some of that, and it may save some time. [11]

Mr. Hoffman: I might state to the Court I don't think there is very much at issue on the facts involved at all. I think we will have very little to put on in the way of testimony so far as the case is concerned.

The Court: All right.

Mr. Hoffman: There is one matter, your Honor, as long as the Court states he wants us to proceed:

In the list that is set forth as to overcharges which is attached to the complaint there are seven items, respecting seven tenants, to which I would like to call the Court's attention, and I think counsel will stipulate that that may be stricken upon the ground that there has been heretofore a disposition between the tenants involved and the landlord—a disposition of the claim which was listed thereon. Therefore the Administrator does not seek any recovery as to those items.

The court: Which are those?

Mr. Hoffman: 207, H. Herrmann, Allen D. Bull—there are two of them—210; M. P. Anderson, 304; Fern Boltz, unit 407; Eileen J. Meloy, 510, and H. H. Tubbs, unit 511.

The Court: How much does that leave, the amount claimed?

Mr. Hoffman: I figured it up. That leaves the amount—the total amount of that, I believe, is \$3,424.48 which subtracted from the amount prayed for leaves a balance of \$2106.24. Is that correct, counsel? I will so stipulate as to those. [12]

Mr. Hirst: As to those, on counsel's representation I will stipulate.

Mr. Hoffman: That is all.

The Court: Put on such oral evidence as you want to offer.

Mr. Hirst: I will call Mr. Noyes to the stand.

LOUIS M. NOYES,

a witness called by and on behalf of the plaintiff,
having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Louis M. Noyes.

Direct Examination

Mr. Hirst: Your Honor, counsel before trial this afternoon has stipulated with us that Mr. Noyes is qualified; he has also stipulated that the documents to which he is about to testify are the official records of the Office of Housing Expediter, and I don't believe there is any necessity to have his testimony at all, so far as identification of the records.

Mr. Hoffman: We will so stipulate.

Mr. Hirst: For the record, your Honor, I would like to identify, first of all, the sequence of events in this case briefly: I will identify for the record the registration forms which were filed by the landlord John McCord. I believe at this time Mr. Hoffman is interested—I understand the [13] important portions of the record are the three first documents and they list in sequence according to the room number the registered rents. As I previously stated, counsel has stipulated that these are the registrations which were filed. I will offer them for your Honor's perusal. I would like to have a stipulation, counsel, in the event they are necessary to be kept in the record that we can have a substitution of a copy at a later time and withdraw these.

Mr. Lande: So stipulated.

(Testimony of Louis M. Noyes.)

The Clerk: Plaintiff's Exhibit 1 in evidence.

The Court: All right.

Mr. Hirst: Your Honor, I first offer the original registrations filed, in the hotel registration form. I call your attention to the fact that in this filing there is a little box, within the boxes for the listings, and it states in the instructions at the top of the sheet that the landlord is to register an "X" mark in the box, the particular accommodation that is rented on the base date of March 1st, 1942, that is, whether it was offered on a daily, weekly or monthly basis. Ultimately, your Honor, the stipulation further provides that the defendant did file—Florence McCord, the wife filed on behalf of herself and husband John McCord a series of registrations, which I am presenting to the Clerk. There are 85 in all. They are filed on a rental registration form, using a form distinguished from the other form. They were filed [14] on or about the 16th day of February, 1946.

The Clerk: Are these admitted, your Honor?

The Court: Yes.

The Clerk: Plaintiff's Exhibit 2 in evidence.

The Court: They made one for each room?

Mr. Hirst: One for each apartment, yes.

The Court: That is very unusual, isn't it?

Mr. Hirst: The plaintiff's case is based on the housing regulation which requires separate registrations for each accommodation.

The Court: This is the first time I ever heard of that. It was done with hotels.

(Testimony of Louis M. Noyes.)

Mr. Hirst: I don't want to assume the ultimate fact of it being done with hotels, your Honor, because the evidence the plaintiff will produce will establish it definitely as an apartment. In other words, they filed a notice or listing of each of these rooms—I believe Mr. Lande checked that—of the 85 registrations there. Eighty of them are self contained units, which have a stove, refrigerator and all the necessary features of an apartment. These are registrations which according to the plaintiff, your Honor, should have been filed in December, 1942. They filed the wrong ones. They filed the wrong forms in the rent registrations and this is to correct their original mistake. That is not a part of the stipulation. [15]

The Court: Let us take the facts. This registration was filed and there is no overcharge contained in this complaint reflecting these?

Mr. Hirst: Except for a very few instances, for a period of three weeks or a month after these registrations were filed. There is no assertion of a violation.

Mr. Hoffman: The Court wants to know if there was any violation in accordance with these registrations. You will concede there are none?

Mr. Hirst: I can't concede that because our case is based upon these being the registrations.

The Court: You have retrojected into the past, and called them a base registration?

Mr. Hirst: Yes. The next file we wish to offer, if your Honor please, is a schedule. This is the file

(Testimony of Louis M. Noyes.)

of the Area Rent Office, your Honor, leading up to the file instigating the order of date August 9, 1945 in which the Rent Director refused permission to Mr. McCord to come in the hotel registration, and counsel has stipulated this is the official record of the office of the Housing Expediter and that the records may be introduced. However, he has not stipulated that all of the letters referred to have been received by the defendants but he will stipulate they were sent out.

Mr. Lande: Yes. [16]

The Court: They may be received.

The Clerk: Plaintiff's Exhibit 3 in evidence.

Mr. Hirst: There is one other document I wish to call to your attention, your Honor. It is part of the permanent file. Counsel has produced it. He will stipulate this letter was sent to the defendant John McCord. I presume he is not stipulating it was received. Your Honor, I have placed a yellow sheet of paper opposite the pertinent document.

The Clerk: Is it admitted, your Honor?

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 4 in evidence.

(Testimony of Louis M. Noyes.)

PLAINTIFF'S EXHIBIT No. 4

Los Angeles Defense Rental Area
1037 South Broadway
Los Angeles 15, California

8R:LA:JRC(c)

September 5, 1945

Mr. John McCord,
Hotel Ontario,
Ontario, California.

Compliance Case No. 130081

Belmont Apartment Hotel
948 South Figueroa Street, Los Angeles

Dear Sir:

Confirming our telephone conversation today, we are requesting that you or your representative call at this office within seven days from the date of this letter for the purpose of re-registering the subject housing accommodations, known as the Belmont Apartment Hotel, under the Housing Regulations, the property at this time being improperly registered under the Hotel Regulations.

Further confirming our telephone conversation of this date, it is our understanding that you are on this date instructing your manager, Mrs. Ross, to permit the tenants Mr. and Mrs. William Everett, to regain possession of their apartment from which they were wrongfully excluded there having been no compliance with the Housing Regulations by you or your manager in the evicting of said tenants.

(Testimony of Louis M. Noyes.)

Your failure to call at this office within the aforesaid time, and to properly register the premises, will result in the matter being referred to the Enforcement Division for immediate legal action.

Very truly yours,

JAMES R. CARNES,
District Rent Compliance Attorney

cc: Mr. McCord at the above address.

Mr. Hirst: Your Honor, that letter I have just referred to, I wish to call your Honor's attention specifically to it being a letter written by Mr. McCord, and I believe that is the inception of the proceedings by the Rent Director. That is the first indication he had that there may have been improper filing. That file is put together, you will notice, in chronological sequence, the last document received being on the top.

The Court: All right.

Mr. Hirst: That is all the evidence I wish to offer.

Mr. Hoffman: May I ask the witness one or two questions?

The Court: Yes. [17]

Cross Examination

By Mr. Hoffman:

Q. Mr. Noyes, you examined this file that has been introduced, and you have had custody and control over it? A. Yes, I have.

(Testimony of Louis M. Noyes.)

Q. So far as your office shows, Mr. Noyes, don't your records show any rates collected, or any rents charged by the defendants—do your records show that the rents collected by the defendants were either in accordance with the original registration or were in accordance with the new registration? Are you able to answer?

A. The question is not quite clear. Do you mean the amount collected by the landlord, under the complaint, are equal to the amounts set forth by the landlord in the various registrations, either the first or second?

Q. That is correct.

A. I did not check these amounts.

Q. You don't know whether they conform or not?

A. No, I don't.

Q. Did you examine your records concerning whether or not they were correct amounts collected by the defendants—that they were in accordance with either one of these two registrations?

A. Yes.

Q. Were they not? [18]

A. They were in accordance with the housing regulation.

Q. Were they in accordance with the first registration, if they weren't in accordance with the housing regulation?

A. I did not check the amounts.

Q. You made only a check against the housing?

A. I personally made only a check against the housing, since it was filed.

(Testimony of Louis M. Noyes.)

Q. So you don't know whether they were in conformity with the original? A. No, I don't.

Q. Do your records show whether any of the rents collected prior to March 27, 1947 were not in accordance with the original registration?

A. They don't show anything one way or the other as to any subsequent date to this action.

Q. I am talking about one year prior to the filing of this, March 27, 1947, do you know of any amounts that were not in accordance with the second registration? A. No, I don't.

Mr. Hoffman: That is all.

Mr. Hirst: I am going to call Mrs. McCord. Let the record show, your Honor, that plaintiff is calling Mrs. McCord as an adverse witness under the Federal Rules of Civil Procedure. [19]

FLORENCE McCORD,

a witness called by and on behalf of the plaintiff under the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: Your name, please?

The Witness: Florence McCord.

Direct Examination

By Mr. Hirst:

Q. Mrs. McCord, during all the period beginning with the date let us say January 1st, 1942, to April 1st, 1946, were you and your husband the operators of the Belmont Apartment Hotel, as

(Testimony of Florence McCord.)

I recall it at 948 South Figueroa Street, Los Angeles?

A. We owned the lease, but we had a manager after September 1, 1943.

Q. You operated the apartment hotel, though, through the agency of a manager. Is that right?

A. Yes, sir.

Q. The registrations which have been introduced into evidence as Plaintiff's Exhibit 2, which I will now show you, I will ask you to briefly glance through those and state whether or not those were registrations you filed on or about the date stamped at the top of each of those registrations. I should say the reverse side is postmark dated February 18, 1946. [20]

A. That's right, I filed these.

Q. The matter contained in the spaces which have been filled in, was that done in your handwriting, Mrs. McCord?

A. Yes, sir.

Q. Where did you obtain the data from which that information was obtained? Where did you get the data for it?

A. I got it from the apartment hotel.

Q. From the hotel records? A. Yes.

Q. And the amount indicated on the space provided for it, where it states that the rent charged on the maximum rent date was so much, as I understand, the amount stated there was taken from the hotel record?

A. Yes.

Q. That was of March 1st, 1942, is that correct?

A. Yes.

(Testimony of Florence McCord.)

Q. Calling your attention to the paper on the right-hand side of these registrations, where you have checked the numerous services and equipment, that information was also gathered from your personal knowledge, or from the records of the hotel, is that right? A. Both.

Q. Is it not true that approximately 80 of these units in the Belmont Apartment Hotel on March 1st, 1942 were self contained units, that is, had their own kitchen facilities? [21]

A. 79, to be exact.

Mr. Hirst: That is all.

Cross Examination

By Mr. Hoffman:

Q. Mrs. McCord, what type of services did you have at this establishment in 1942, when it was originally registered?

A. If we sold a room or apartment on the transient basis, they received the same as you do at a hotel, the daily maid service, clean towels, toilet tissue, and if we sold it on a weekly basis they still received—if we knew they were going to be there one week or two weeks they still received daily service, and if they were there as a permanent guest they received maid service once every two weeks, but we gave them continuous telephone service. It was operated like a hotel.

Q. It had 85 rooms?

A. It had 150 rooms. There were 79 units, they call them in California, and 6 hotel rooms.

(Testimony of Florence McCord.)

The Court: By hotel rooms, they are rooms which do not have the kitchen accommodations?

The Witness: No.

The Court: A bath goes with every unit?

The Witness: Yes, a bath goes with every unit and with every room. [22]

Q. By Mr. Hoffman: Mrs. McCord, when the original registration was made by your husband John McCord, Plaintiff's Exhibit 1, showing certain figures of rates charged for these various rooms, were those taken from your hotel records?

A. Yes, they were.

Q. And did you rent rooms at the time this registration was filed, on the daily, weekly and monthly basis? A. Always.

Q. Depending upon what?

A. Upon the desire of the guest.

Q. Were you with Mr. McCord when Plaintiff's Exhibit No. 1 was originally prepared?

A. Yes.

Q. Where did you obtain these papers?

A. Down on South Broadway; 1031 South Broadway. We went there and they sent us across the street and we were given this file.

Q. Did you talk to someone there?

A. We talked to a lady. She asked us what kind of service we gave, and what we had. She gave us that file.

Q. In other words, she gave you each one of these papers and asked you to fill them out and send them in?

(Testimony of Florence McCord.)

A. She told us what to do with them, and we filled them out. [23]

Q. That was the 15th of December?

A. The 15th of December.

Q. Thereafter, and until you filed these other papers which you were shown, on February 16, 1946, did you charge the rates shown on these papers, to your tenants?

A. Yes, we charged those, and no more, up until we re-filed.

Q. Then did you change your rates when you refiled?

A. Yes, we did right away; we notified the guests that on their next rental date their rent would be so and so.

Q. Were you told, or were you under the impression that those were the rates that you could collect? A. Certainly.

Q. Until you were notified to the contrary by the Office of Administration?

A. That's right.

Q. Then you changed them? A. Yes.

Q. Then you changed your rate?

A. We changed the rate.

Q. Can you tell the Court, so as to make it clear, this: The rates which you listed on the original papers, that is, as of December 15, 1942, were based upon what rates, or what period of time?

A. February, 1942. [24]

Q. You mean the entire month of February?

A. The highest rent collected in the month of February.

(Testimony of Florence McCord.)

Q. The rates which you set forth in these individual papers which you filed February 16, 1942, were based upon when? A. March.

Q. When?

A. March, 1942; the highest rent collected in March, 1942.

Q. Do you mean the entire month?

A. No, the highest rent collected March the 1st, 1942, yes.

Q. So these are only on a one day basis?

A. Yes.

Q. These are on the entire month basis?

A. Yes.

Q. That is the difference between the two rates shown on it? A. That is right.

Mr. Hoffman: No further questions at this time.

Redirect Examination

By Mr. Hirst:

Q. Mrs. McCord, you stated that you were with your husband when the original registration was filed at the [25] Broadway office?

A. Yes, sir.

Q. You recall there were a number of clerks? That is the triangular building at Tenth and Broadway? A. Yes.

Q. You talked to one of the clerks there?

A. My husband did the talking but I was right there with him.

Q. Did you state to the clerk that you operated a hotel?

A. We told her that it was an apartment hotel;

(Testimony of Florence McCord.)

we had both. She said, "What do you sell mostly?" We said, "We prefer to sell transiently, and we rent as a hotel," so she said, "We will have a hotel filing."

Q. You told her what your preference was?

A. No. We did not ask her for the forms at all.

Q. Did you tell her all of your rent during the month of February had been predominantly on a permanent basis?

A. No, we did not tell her that, because we did not know it.

Q. Did you help your husband at all in preparing this original registration? A. Certainly.

Q. The first three pages is all I will call your attention to, Mrs. McCord. These are the listings in the original registration. I call your attention to the notation [26] under Section B where it says "If the room was actually at the rent reported and not merely offered for rent, indicate by placing an 'X' in the box after the amount." I call your attention to the numerous entries after each of the rooms, and the rents apportioned for each of the rooms, and ask you to state, is it not true, based either on your personal recollection, or refreshing your memory from that record, that the predominant number of apartments there were actually rented by the month during the month of February, 1942? I also call your attention to the reverse side of these forms, Mrs. Cord, where the listing is also given.

A. There were a lot of them rented at the rate of \$2 a day, but there weren't as many.

(Testimony of Florence McCord.)

Q. There were only a few, were there not, rented on a daily basis during that time?

A. During that time.

Q. Most of them were on a monthly basis but a few on a weekly basis?

A. Quite a few of them were weekly.

The Court: Where is this located?

The Witness: At 948 South Figueroa, right across the street from the Figueroa Hotel.

Q. (By Mr. Hirst): How many two-room apartments do you have there?

A. Are you speaking of doubles? [27]

Q. Single apartments.

A. There are 12 doubles and 12 from 79 is 57.

Q. 57 single apartments?

A. Yes, 57, 12 and 6.

Q. The balance are single rooms or bachelor apartments? A. Yes, 6.

Q. In each of these facilities, that is, the single apartments and the double apartments, there are kitchen facilities and bathroom facilities?

A. Yes.

Q. They are actually self contained units, are they not? A. Yes.

Mr. Hirst: That is all.

Recross Examination

By Mr. Hoffman:

Q. I want to ask the witness a question: Mrs. McCord, your husband who filed these is not here today, is he? A. No, sir, he is ill.

(Testimony of Florence McCord.)

Q. How long has he been ill?

A. He has been ill for about three years.

The Court: Is he bedfast?

The Witness: He is in and out of the hospital. He has been in the hospital five times the last three years. [28]

Q. (By Mr. Hoffman): You have been handling the matter yourself? A. Yes.

Mr. Hoffman: I have no further question at this time, your Honor.

Mr. Hirst: That will be all, your Honor. The plaintiff rests at this point.

Mr. Hoffman: We have a motion at this time.

The Court: You might as well put all your additional facts in. Any ground that you have for judgment that you might have for a motion is just as good at the conclusion of the case, and saves a lot of trouble, since the Circuit Court has said that we have to make findings on a motion for a non-suit.

Mr. Hoffman: I will simply call Mrs. McCord for my witness for a couple of additional questions.

MRS. FLORENCE McCORD

one of the defendants, recalled as a witness on behalf of the defendants, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Hoffman:

Q. Mrs. McCord, where do you and your husband now reside? [29]

(Testimony of Florence McCord.)

A. At Ontario, California.

Q. How long have you resided at Ontario, California? A. Since March 1st, 1945.

Q. Prior to that time where did you and your husband reside?

A. We operated the Allesandro Hotel at Hemet, California.

Q. During the years after this registration on December 15, 1942, to 1945 were you residing at Hemet?

A. We went to Hemet on October 1st, 1944.

Q. Prior to that time where were you and your husband residing?

A. At the Belmont Apartments.

Q. You were there up until when?

A. September 1st, 1944.

Q. From that time on you operated this establishment through a management, is that correct?

A. Yes.

Q. If any mail was sent to you at the Belmont, it would have to be forwarded to where you were?

A. That's right.

Q. Mrs. McCord, with respect to the various tenants that you had in the Belmont Apartment Hotel during the years 1943 and 1944 and 1945, during those three years, what were the rates which you charged your tenants, that is, with [30] respect to these registrations?

A. We charged exactly what was on the register.

Q. That was the one you originally filed?

A. That's right.

(Testimony of Florence McCord.)

Q. After you changed the registration—that was, I understand, February 16, 1946?

A. That's when we re-registered.

Q. Did you then change the rates to your tenants as of March 1st and of the next rental date?

A. Yes.

Q. In accordance with that registration?

A. The housing registration.

Q. Are you and your husband now operating the Belmont? A. No, we aren't.

Q. Do you still have it?

A. No, we don't; we sold it.

Q. When did you sell it?

A. April 1st, 1946.

Q. You have not had anything to do with it since that date, is that correct?

A. No, that's right: I haven't even been in the door.

Q. Do you recall being asked by the Office of Price Administration to change your registration?

A. Yes.

Q. On the basis that you were not properly considered [31] as a hotel? A. Yes.

Q. And did you change your registration in accordance with their desire?

A. I sent it in to the office and they did not accept it. I sent it in again and they did not accept it. When they accepted it the second time I changed the rate.

Q. Mrs. McCord, did you or your husband have any idea at all, or were you told by anyone at the

(Testimony of Florence McCord.)

time that you registered on the original form, that that registration was not correct?

A. Why, no.

Q. Did you assume that it was?

A. Why, of course. We operated that way for three years or longer.

Mr. Hoffman: That is all.

Cross Examination

By Mr. Hirst:

Q. Do you know, Mrs. McCord, whether or not the Office of Price Administration was notified by you or your husband following your moving from the Belmont itself? You stated you moved from there September, 1944?

A. 1943, I should have said.

Q. Do you know whether your husband notified the office or you yourself did? [32]

A. No, I didn't. I don't know if he did or not. I did not think it was necessary.

Q. I call your attention, Mrs. McCord, to the letter here contained in Plaintiff's Exhibit 3 which is signed "John McCord," and addressed to the Los Angeles Defense Rental Area. Is that your husband's signature? A. Yes.

Q. I call your attention to a letter-head, which at the top of the sheet indicates the Belmont Apartments, 948 South Figueroa. Is that the letter-head used by your husband?

A. That stationery was there when we took it over.

Q. You took the stationery then with you when

(Testimony of Florence McCord.)

you moved from the Belmont? A. No.

Q. You used it to write letters?

A. This stationery belonged to the property. They had it prior to us. We used it.

Q. You will notice that the address stated by your husband on the letter-head is 948 South Figueroa Street? A. Yes.

Q. He wrote that letter dated July 12, 1944?

A. Yes.

Q. Were you aware that your husband sent the letter at the time? [33]

A. No, I didn't even read it, what it said.

Q. I will ask you to read it and see if that refreshes your memory? Does it refresh your memory? A. I saw that letter before.

Q. You weren't present when your husband wrote it? A. No.

Q. Do you know if he received any communications following the sending of this letter to the office? A. No, I don't.

Q. I call your attention now to the various letters which are in the file, which are all subsequent to the receipt of this letter of July 12, 1944, and call your attention to the letters of December 6, 1944, January 2nd, 1945, February 16, 1945, March 13, 1945, May 10, 1945, and May 26, 1945, with the final letter signed by Mr. John McCord June 5, 1945. Did you receive the original of those letters?

A. I have not read any of them yet. In October, 1946, I am quite sure it was in October, that Mr. Percy Hayes from the Hotel Association and my-

(Testimony of Florence McCord.)

self went to the office of the Price Administration, because I was aware of the fact that they wanted us to re-register.

Q. October, 1946?

The Court: 1945.

A. I think it was 1945; that's right.

Q. (By Mr. Hirst): You say in October, 1945, a [34] representative from the Hotel Association and you went to the agency?

A. Yes.

Q. What took place?

A. Well, I discussed with her—it was a lady; I don't recall the name.

Q. Was it Miss Lushu?

A. Yes. She said we would re-register as a housing. So then I did re-register. I don't remember the date but I remember they refused that; then I again registered and they accepted that one. That was February 16th.

Q. You say you again re-registered this, a final registration?

A. There was something wrong with the one, or something.

Q. That was the reason that you were not accepted the first time. Is that true?

A. Yes.

Q. Did you read these letters I referred you to?

A. I am reading them. I don't remember about this. They kept asking for September, October and November.

Q. They kept asking you for figures of your operation for those three months?

(Testimony of Florence McCord.)

A. I don't recall receiving all these letters. This was in 1945. That was when I was taking care of it. [35]

Q. I call your attention to the last letter, that I called to your attention previously, of May 26, 1945, to which there was apparently a reply by John McCord. Is that the letter your husband wrote?

A. That is his signature.

Q. Would you read the letter?

A. "Referring to yours of May 26th, 1945, sorry to advise that, inadvertently,——"

Q. I don't mean out loud.

The Court: Read it to yourself.

A. That's his signature.

Q. (By Mr. Hirst): Were you present when he wrote that letter?

A. I can't understand it.

Q. I call your attention to the subsequent letter of July 31, 1945, addressed to Mr. John McCord. Will you read that too? Did you ever see the original of that letter? A. No.

Q. Do you know whether or not your husband received it?

A. No, I couldn't say whether he did or whether he didn't; I don't know.

Q. That is true as to all of the rest of the letters? A. That is right.

Q. In any event, you haven't seen that before, according to your best recollection? [36]

A. Often he went into the Belmont without me.

(Testimony of Florence McCord.)

She would give him his mail. Sometimes I would go in and I would get the mail.

Q. As finally recorded, will you read to yourself the order denying the petition, dated August 9, 1945, and state whether or not you ever saw that before?

A. I did not know there was a petition until I read this. I did not even know that he asked for it.

Q. You did not know that he asked for permission to come in under the regulation? A. No.

Q. You don't know whether your husband received that or not?

A. I did not know that he even asked for it.

Q. You don't know whether he may have received it at the Belmont, going in and picking it up, as you say he sometimes did?

A. Sometimes he would pick them up, and sometimes they sent them to him.

Q. You did receive communications, did you not, which were addressed to Mr. McCord at the address of 948 South Figueroa, after you moved from there? A. Yes.

Q. They were forwarded to you? A. Yes.

Q. Who were your managers during 1945 and the first part of 1946, before you sold the hotel?

A. Mrs. Roberts was the first one, and then Mrs. Ross.

Q. Do you recognize Mrs. Ross' handwriting?

A. I think so.

The Court: Is there anything further, gentlemen? Let me look at the letters that you men-

tioned. I don't think my attention was called to that particular letter.

Mr. Hirst: The letter that her husband wrote, your Honor?

The Court: Yes. Yes, I saw that.

Mr. Hirst: I believe that is all.

The Court: Any further testimony?

Mr. Hoffman: No further testimony.

(Short recess.)

The Court: All right, gentlemen, I will hear any comments you want to make.

Mr. Hirst: Your Honor, I would like to preface what I say by calling your attention to the situation back in November and December 1942. There was the situation there when the rent control first went into effect, where anybody who had any property was scurrying to get in within the requirements of the law, and for that purpose clerks were hired by the government to pass these out to those requesting them. I don't think the court should give consideration to that [38] fact because, after all, there is a regulation in force, and the defendant could have sought out the information as to whether they had acted properly or not. The registration is not the determining factor, so far as establishing the maximum rent is concerned. That is only prima facie evidence of what the maximum rent was.

She has admitted by her subsequent registration that on March 1st, 1942, which was the freeze date for the rent control, the rents charged were in ac-

cordance with the registration, on the second registration which occurred February 16, 1942. Those were the ones that should have been filed originally. The government should not be penalized because the landlord has filed on the wrong form. It is the same as the income tax. It may be unfortunate that it took place. I won't say that they did it deliberately. That is not the point in issue. The fact is that they filed on the wrong form. The fact further is that on March 1, 1942, the situation so far as the operation of that establishment was concerned, it was predominantly operated as an apartment house.

In March 1942 there were 63 complete tenancies there of at least two rooms, some three rooms, and some double apartments; there were seven weekly tenants and there were seven daily tenants there. Under the definition of the regulation there is no question but what that establishment was at that time an apartment and was thereby subject to rent regulations [39] for housing, which required the proper filing of the registration form, although the government had no knowledge of the true facts other than the statement of the landlord that it was a hotel. They permitted that registration to be filed for three years, and that should not mitigate against the government because they are acting on information submitted by the landlord.

Now commencing in July 1944, John McCord—the reason why I don't know—sends a letter to the agency and says he has been operating this for some time and will continue to operate it as a hotel prop-

erty. There is some question in his mind. They ask him to furnish information and fill out certain forms to establish that it is either a hotel or an apartment.

Several months pass. Eight or nine months go by and in July 1945 the landlord is notified by letter—that you are definitely under the rent regulation for housing and you must come in and re-register. That is promulgated in the order issued the 9th day of August 1945, which denied his petition. Apparently the office treated the letter written by Mr. McCord as a petition.

Some time passes, and the defendants did not make the registration until February 16, 1946, which was five months beyond that date, and this states that they were notified to come in by the compliance department and file a registration, [40] and they were told to do so by the enforcement department, and suit was filed, to enforce compliance with the regulation.

The defendants did not operate for only a short time after the regulations were filed in April 1st, 1946. Then they went out of business. Your Honor, there certainly is no benefit that the defendants should derive from the passing of all that period of notification and the first indication that they were not under the proper regulation. They cannot claim the benefit of that delay themselves. The delay should be, if anything, in favor of the government. They were not entitled to come under the regulation for hotels. They were apparently satisfied that they had filed improperly, and after some

more delay did file under the proper regulation. It does not take away the fact that there had been overcharges, your Honor, for a period of two or three years.

Your Honor knows well that before the proper determination is made by the agency, the agency is in no position to go into court and seek treble damages. They have to await the final action by the landlord and when the registration is filed then it becomes the basis upon which the Office of the Housing Expediter can file an information for a treble damage claim. The information is peculiarly with the landlord.

It is the plaintiff's contention that if there is any doubt in your mind that this property was subject to the rent regulations for housing as differentiated from the rent regulations [41] for hotels, you can find it by referring to the definition in the regulation itself that is cited in the brief which has been filed, your Honor. The rent regulation involved for housing, with specific exceptions, is provided for in Section (b)(3) which exempts from said regulation rooms in hotels, rooming houses and motor courts. It also anticipates a situation where the Director might see fit to grant its consent to the operator of a hotel to bring itself within the operation of the rent registration for the hotel. Here there is no such consent given.

Referring to the status of this establishment on March 13, 1942, it was predominantly for permanent guests. There were 63 monthly tenants there. I don't see how counsel has any doubt about it. The

very fact that the defendant had filed a second registration is an admission on his part that they were in there and they have very definitely established, to my satisfaction anyway, that they were under the regulation for housing.

The only question is, was there any violation of the rent registration on March 1, 1942, with the schedule of overcharges, which the defendant admits were made, and for which they collected the rents.

The equities of the case demand that we get whatever relief is available by way of restitution. I feel that there is sufficient authority, your Honor, to invoke the equity jurisdiction [42] of this Court.

Mr. Lande: May it please the court, it is interesting to note that the plaintiff comes in here and throws himself on the mercy of the equity powers and remedies of the court. I point out to the court that this is not an action by the government for equitable relief for the benefit of the government, but it is for the benefit of certain individuals, in an action for restitution. I call your Honor's attention to the case of *Porter vs. Montgomery*, 163 Fed. (2d) 211, in which the court went at great length to determine and discuss an action brought for the benefit of the individual and those actions in which the government can get any relief.

The Court: I have that case before me but that was a price case, an overcharge where the amount is a fixed amount, whichever is the greater, \$50 or a suit for the overcharge. The court in that case inclines to the view that because of that it was

more of a penalty. The real point before the court was whether the action survived, and the court held it did not survive because it was in the nature of a penalty. That is not before us here.

Mr. Lande: The theory is very applicable. If the action did not survive because it was a matter of a statute which created the penalty, it would not survive here.

The Court: That is not the point before us. The point before us is that the Supreme Court has held that you can also [43] do equity by compelling restitution. You can do that whether you give a judgment for the amount recovered or not. The way it goes in my judgment is that the administrator is directed to return the money when collected from the defendant to the particular tenants, because you can't have the judgment in favor of the tenants, because they are not parties to the action. So now the question before me is this: No injunction is necessary here because they do not own the property any more and did not own it at the time this action was brought. Now there can be no recovery of the amount.

The question is should I allow the overcharges under the equity power or should I apply the principles to which I refer, that ordinarily we will consider the period of laches the same as the statute of limitation. In other words, a delay for the length in which a civil action would be outlawed is the type of delay which in California, and generally, is considered as laches. In my cases, I have held that where the periods are long the courts have

cut them down, as in the Akley case. So that is the problem before me.

There is no showing of fraud. Whether it was a misconception I do not know. He wrote a letter in July 1944 and until that time they felt evidently that they had registered properly and charged the proper rent. Then there was correspondence back and forth which ultimately resulted in a new registration. All the time since 1944 the administrator had [44] evidently questioned the propriety of the registration, and even after the new registration there was a delay of over a year in instituting this action. In *Cleimclaus vs. Dutard*, 147 Cal. 245, the court said:

“There is no artificial rule as to the lapse of time or circumstances which will justify the application of the doctrine. Each case as it arises must necessarily be determined by its own circumstances, or as said by this court in *Bell vs. Hudson*, 73 Cal. 285: ‘In other words, the question is addressed to the sound discretion of the chancellor in each case.’ ”

In that case it was said that the statute of limitation had not run. They held 27 months delay in bringing the action was too long a delay to be considered in equity, even though the statute of limitations had not run. The argument in the case was that laches should not apply because the statute of limitation did not divest anybody of title and that by the Civil Code of California, title by adverse possession could not be acquired under five years.

But they said otherwise. So that is the point before the court.

Mr. Lande: I am reluctant to pursue it further, sir, because you obviously are much better informed on it than either counsel.

Under the whole trend of events what brought the matter [45] to the attention of the Housing Expediter was the letter written by the defendant himself in July of 1944. As a matter of fact, the rejection was not made before 1945. And late in December 1945 action was filed by the Housing Expediter to make these people comply and they were called down to the Office of the Housing Expediter and got the necessary forms and filled them out.

I think we can appreciate the problem that the Expediter had with 85 of these to file. So these people who had attempted in October 1945 to file these papers, they were made parties to an action started by the Housing Expediter to require them to comply with what they were already doing, and they asked for a temporary injunction and for restitution. That suit was dismissed. Why was it dismissed? Because there wasn't anything improper.

Here was a mistake. These people had taken the path of least resistance, and with the great power of the United States the Housing Expediter says, "You have got to do this." Very few people will take it upon themselves to contest that. That was all these people did. That required the Housing Expediter back in 1945 or 1946 to dismiss that suit, because he knew these people were not acting im-

properly and there was some question at that time as to the registration.

Referring to the letter of July 1944, Mr. McCord wrote, he set forth that 66 per cent of his property is transient, [46] and I with Mr. Hoffman had just completed several hours on that very problem with the aid of Mr. Noyes and had there difficulty establishing whether it was a hotel. The Administrator some time afterwards decontrolled two of these apartments. I simply point that out to show that there was some question about it at all times and at all times these people sought to comply with the OPA.

It is pretty obvious that the Administrator felt there had been an improper action. What is the position of these people? They had to pay an income tax for 1942, 1943 and 1944 on the basis of these rents. These returns cannot be amended because the three-year period has run. They have paid out money on income. And there is no way they can protect themselves. The government ought to come in here and do equity. They have asked this court as an equity court to do something improper by their own action. There is certainly an obligation; if the government does not know from 1942 to 1945 what the score is, how do these poor people, whose only contact with the law is the OPA office, know what to do? The officers cannot sit by for three years and all of a sudden say you have made a mistake.

What is the effect of the mistake? The effect of that mistake is that actually the order is retro-

active for the rental. That is what the effect of the action is.

I wish to cite the case of *Collins vs. Fleming*, 163 Fed. [47] (2d) 431, and also the case of *Bowles vs. Griffin*, 161 Fed. (2d) 458, which holds that if the landlord deceitfully procured the rent fixing order from the rent director, the landlord cannot rely thereon in the tenants' action for penalty for overcharging for housing accommodations.

That is the situation here. There is no bad faith. There is no fraud.

I think the issues are clear and there is nothing more that need be said than to state our position which is exactly as the court has enunciated, and that is that while the Housing Expediter cannot himself recover, equity is governed by the statute of limitations which is the equivalent of the doctrine of laches.

Mr. Hirst: Your Honor, I think counsel paints an unduly harsh picture of the prosecution complex of this government, indicating that the Administrator of rent control would go out and the government would sit around with these people and we have nothing to do but file these actions.

As a matter of fact, counsel is well aware of the principles that govern agencies, and they are presumed to do their duties under the law. Your Honor has noted in one of the decisions that very point was made. I will state to the court in my opinion, in view of the law and of the cases, there is no issue of the retroactive effect of any order involved. We are back to March 1942. From that date you de-

termine what is [48] the maximum rent of these various accommodations. It is on the basis of the second registration, and there is no retroactive effect. That is made clear in the brief. I won't go into that point any more except to cite one decision, *Kalvar vs. McKinnon*, which is a Circuit Court of Appeals decision from the First District:

“It is clear, we think, that the figure put down by the landlord that the rent he was receiving on the freeze date does not become even tentatively, the legal maximum rent. If the landlord makes a false statement in the registration statement or if he neglects to file a registration statement, he may be subject to criminal penalties under Section 205(b) of the Act; but in either case the legal maximum rent is determined by the formula set forth in Section 1388.284, and in any litigation where the point becomes relevant the rent which was actually being charged on the freeze date must be factually determined.”

That is what we have to determine here; in March, the first of March, 1942, the rent was in accordance with the registration which was filed ultimately on February 16, 1946.

There is just one thing further. The defendant makes the point, counsel makes the point, that the defendant wrote a letter, and 56 per cent of his accommodations as being rented [49] on a transient basis. That is absolutely refuted by the regulations themselves.

The Court: I think he meant at the time he wrote the letter. It might have been true at the time he wrote the letter.

Mr. Hirst: We won't question that. The main point is not what he was charging then, but what he charged on March 1st, 1942.

I think, your Honor, in taking into account laches, we ask that the refund should be made the tenants because they were overcharged. The landlord had plenty of time, your Honor, from July 1944. There is a record before your Honor to show that the agency persistently requested the defendant to furnish information, which was not forthcoming until a much later date. He did not stop his operations and catch his breath and see what he was doing. He was continuing to operate. He knew the Administrator had questioned him and, as a reasonable man, he should have immediately complied with all the requests for information, and certainly the three years prior period from the date of the filing of the original registration, to the date that the defendant himself wrote the letter, that period cannot mitigate against the government, because the registrations are filed by the landlord. There is no provision made that the agency should investigate each registration filed to see if the landlord made a false [50] statement. He is presumed to file them pursuant to law. There is no way the government can process millions of applications on that basis. It is presumed the facts stated are true. As a matter of fact, there is a provision for penalty. It is stated on the registration that a false state-

ment may subject them to a penalty of \$5,000 and 10 years, or something of that nature.

The Court: Gentlemen, I do not like to establish a precedent of law and equity relief by way of restitution beyond the period of one year. In other words, if the remedy at law is barred, and no injunction can issue, then there should be no restitution beyond that period. That is the law of California and is the law of every place.

Mr. Hirst: I hesitate to interrupt your Honor but I want to make reference to the case of United States vs. Martha Ensley. That goes to the point of laches, your Honor. It is squarely held that the United States is not bound by any statute of limitations, nor is it barred by any laches of its officers.

We will admit that so far as the legal statute of limitations are concerned we are so barred. There is the difference, your Honor. This is not a private individual suing a private individual at all. I understand that these people own hotel property at this time, and the fact that they have sold out a hotel interest should not wipe the slate clean so [51] far as a violation is concerned. This is a chancery court, and is asked to exert its equity jurisdiction and not be limited to a one-year period.

The Court: I am aware that the government is not barred by any statute of limitation. In fact, I wrote an opinion in San Diego, where the government sued the County of San Diego for damages caused by fire in a forest reserve. The government allowed the county to build a road through the National Forest, and the county agreed that the gov-

ernment should be reimbursed for any fire caused during the construction of such road, by the county, or workmen working under its control. The government brought suit, and the county filed a motion to dismiss upon the ground that the government had not complied with the rule which required presenting a formal claim to the Board of Supervisors.

In my opinion I cited cases to the effect that the statute of limitation, and the presentation of claims, such, as for instance, presenting a claim to probate, before you can sue, and the like, are not binding on the government. In other words, the sovereign, the United States, only binds itself by direct provisions, where it allows itself to be sued.

That is not the point here. The Congress has put down a statute of limitations, and has said the government shall not be sued beyond that period. The Supreme Court has said, in exercising powers under this Act we have an additional [52] power. That is, to order restitution. The question is, when shall that be exercised? Therefore, the recovery being for the benefit of the persons, that is, restitution to the individuals, those individuals could themselves have brought suit. They did not, and in the case of *Blood v. Fleming*, 161 Fed. (2d), 292, the court said:

“Limitations upon the powers of the court to proceed under the provisions of this section are governed by equitable considerations. Whether an action may be maintained under this section is not controlled by the one year

limitation set up in Section 205(e). It may be instituted within such time as is not barred by laches. Appellant did not plead, nor does he assert, that he was prejudiced by the delay of more than one year in the institution of the action."

A fact which cannot be contradicted is that generally courts of equity, in ruling on the subject of laches, will coordinate that with the statute of limitations. I call attention to the leading case in California of *Akley v. Bassitt*, in which the court even went beyond that, and held, even though the statute of limitations had not run at the time the action was instituted, nevertheless, in point of equity, laches had occurred, which barred the action from being instituted.

I agree with Mr. Hirst to this extent: That the government had a right to assume that anybody who made a registration made an honest registration, and it was not until their attention was called to the fact that possibly the registration was incorrect, were they required to act.

The evidence shows, without contradiction, that the defendants, as did other persons, sought advice. They did not know one form from another, nor did anyone, as a matter of fact, until these forms were actually put out.

There is no showing that they fraudulently tried to run this as a hotel. They were under the belief, evidently, that they had a right to run it. By the same token, the Administrator had a right to rely upon the fact that the rent was correctly repre-

sented according to the formula which was established as of March 1942, the freezing date for rentals.

However, this fact remains, that ever since 1944, the enforcement agency questioned this registration. They began negotiations, through letters, to secure a different registration. Ultimately a registration was secured. They waited thirteen months until they instituted this action. There has been a change of possession, not only in surrendering the property, but also in reporting this matter, and the income which they received, on which they had to pay taxes.

Therefore, I believe that the facts in this case do not call for the exercise of the chancellor's power of reimbursement, because neither the plaintiff, nor the renters [54] themselves, can recover. I think they should be charged with laches on their own part, because they did not have to wait for the Administrator to bring action. They could have brought action in the State courts, or in this court, to recover the amount. I feel this is a sound principle to follow. As I have intimated before, whether to Mr. Hirst, or Mr. Solof, or to the men up in Fresno, I believe that laches for a period of one year should bar reimbursement in these cases.

Therefore, I will find against the plaintiff upon the grounds I have indicated, that there has been no fraud or concealment. There may have been a mistake, but there was too much delay on the part of the Expediter, and on the part of the persons entitled to bring suit, and the condition of the de-

fendant is so changed that it would be inequitable to order reimbursement at the present time.

Will you waive findings?

Mr. Lande: Yes, I am perfectly willing to.

Mr. Hirst: I cannot at this time, because I will have to consult with my superior.

Mr. Lande: We will prepare findings.

The Court: Prepare findings, unless the same are waived by counsel. [55]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 13th day of September A. D., 1948.

/s/ HENRY A. DEWING,
Official Reporter.

[Endorsed]: No. 12039. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. John McCord and Florence McCord, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 20, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

